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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JAN 24 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

)  
Petition for Declaratory Ruling the AT&T's )  
Phone-to-Phone IP Telephony Services Are )  
Exempt from Access Charges )  
\_\_\_\_\_ )

WC Docket No. 02-361

**REPLY COMMENTS OF NORTHEAST  
FLORIDA TELEPHONE COMPANY**

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Dated: January 24, 2003

Noted  
JAN 24 2003

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## SUMMARY

In the initial round of filings in this proceeding, the Rural Telephone Group, including Northeast Florida Telephone Company (NEFCOM) and a number of commenters demonstrated that phone-to-phone IP telephony services are “telecommunications services” that should be subject to all applicable access charges and universal service mechanisms. The phone-to-phone IP telephony service offered by AT&T and other service providers is functionally indistinguishable from telecommunications service provided by interexchange carriers. And, the functions performed by the originating and terminating LEC for phone-to-phone IP calls are no different from the access functions they perform for long distance calls. Thus, LECs are entitled to be compensated for the use of their facilities through access charges, regardless of the technology used during interexchange transport.

The commenters also have demonstrated that exempting phone-to-phone IP service from access charges would have serious negative consequences on local exchange carriers and their customers by reducing access revenues and encouraging a shift to the use of the IP platform, which would further reduce access revenues. **A** finding that VoIP services are not telecommunications services also would exacerbate the funding problems currently facing the Universal Service Fund.

Moreover, the problems highlighted by the comments are not speculative or hypothetical. Indeed, NEFCOM is being adversely impacted by Southeastern Services, Inc. (SSI), a company that is providing long-distance service using phone-to-phone IP telephony, and which refuses to pay access charges. **SSI** already owes NEFCOM almost three-quarters of a million dollars to date. NEFCOM’s monthly residential basic local service rates would have to be increased by \$4.23 per month to make **up** this current access revenue loss. However, should the AT&T

Petition be granted, resulting in a further loss of access revenues, NEFCOM's residential basic service rates could increase by \$17.32 per month.

Accordingly, NEFCOM **asks** the Commission to **take** quick action on AT&T's Petition and find that phone-to-phone IP telephony services are "telecommunications services" subject to all applicable access charges and universal service obligations.

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**REPLY COMMENTS OF NORTHEAST  
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Northeast Florida Telephone Company ("NEFCOM"), by its attorneys, hereby submits its reply comments to the comments tiled by other parties in response to AT&T's Petition for Declaratory Ruling ("AT&T's Petition"). In particular, NEFCOM replies to those comments addressing the impact that granting AT&T's Petition would have on Universal Service and small rural telephone companies such as NEFCOM. NEFCOM also makes reference to the comments filed by Southeastern Services, Inc ("SSI"). SSI's comments provide a salient example of how the provision of IP phone-to-phone telephony free from the payment of access charges – as requested by SSI – will impact Universal Service goals and small, rural local exchange companies in a most detrimental fashion.'

**I. Background**

On December 18, 2002, NEFCOM – as part of the Fair Access Charge Rural Telephone group ("Rural Telephone Group") – tiled comments in opposition ("Opposition") to AT&T's Petition for Declaratory Ruling ("Petition") in which AT&T also **asks** the Commission to declare that its phone-to-phone Internet Protocol (IP) telephony long distance services are not

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<sup>1</sup> In its Petition, AT&T indicates it is paying originating access charges on phone-to-phone IP telephony. AT&T's Petition. p. 19. SSI, however, contends that its phone-to-phone IP telephony should be exempt from any access charges, SSI Comments, p 3, and SSI is refusing to pay any access charges to NEFCOM

“telecommunications services.” In its Opposition, the Rural Telephone Group opposed AT&T’s Petition because AT&T’s service is not an information service and because “grant of AT&T’s Petition would undermine the access charge regime” and would “negatively impact rural carrier revenue streams.”<sup>2</sup> In support of these latter statements, the Rural Telephone Group presented a real-life example of how one of its members, NEFCOM, is being adversely impacted by an entity in its operating area that is offering and providing long distance service using phone-to-phone IP telephony and is refusing to pay access charges. Although the entity was not identified in the Rural Telephone Group Opposition, the entity itself, Southeastern Services, Inc. (“SSI”), filed comments in this proceeding in which it confirmed this real-life example.

## **II. Phone-to-Phone IP Services are Telecommunications Services**

In addition to the Rural Telephone Group, a number of commenters, including the National Telecommunications Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the National Exchange Carrier Association (NECA) and the United States Telecom Association (USTA), have demonstrated that phone-to-phone IP telephony services are “telecommunications services” that should be subject to all applicable access charges and universal service mechanisms. As demonstrated by these commenters, the phone-to-phone IP telephony service offered by AT&T and other service providers is functionally indistinguishable from telecommunications service provided by interexchange carriers.<sup>3</sup> It is “a transparent telecommunications service” offered “directly to the public for a fee.”<sup>4</sup> With phone-to-phone IP calls, the originating callers “simply perform standard “1+” dialing or dial a local number as is commonly required for dial-around long distance voice service.”<sup>5</sup> And, there is no information

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<sup>2</sup> Opposition at 1-2.

<sup>3</sup> NTCA Comments at 5; OPASTCO Comments at 6.

<sup>4</sup> NTCA Comments at 5.

<sup>5</sup> OPASTCO Comments at 7.

service aspect to the call.<sup>6</sup> Rather, the call is simply voice communication, indistinguishable from any long distance call.

Moreover, as demonstrated by these commenters, the functions performed by the originating and terminating LEC for phone-to-phone IP calls “are no different than the access functions they perform for regular long distance calls transported without IP technology.” Thus, LECs must be adequately compensated for the use of their facilities through access charges, regardless of the technology used during interexchange transport.

The commenters also have demonstrated that exempting phone-to-phone IP service from access charges would have serious negative consequences for local exchange carriers and their customers by creating “a government policy-generated incentive to shift voice telephone traffic to the IP platform,”\* which “would likely cause a further decline in access minutes of use (“MOU”) even though the LECs’ exchange plant would still be used to originate and terminate calls.” Because under rate of return regulation any decrease in access MOUs increases access rates for remaining customers, a decision to exempt phone-to-phone IP service from access charges would increase “uneconomic incentives *to* switch to VoIP technology.”

Grant of AT&T’s request and the resultant switch to voice over IP (VoIP) technology also would exacerbate the funding problems currently facing the Universal Service Fund (USF) because the Commission has not imposed USF contribution requirements on interstate information services. Therefore, a finding that VoIP services are not telecommunications services would effectively exempt long distance calls using this technology from **the** USF

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<sup>6</sup> NECA Comments at 2.

<sup>7</sup> OPASTCO Comments at 2.

<sup>8</sup> NECA Comments at 5.

<sup>9</sup> Id.

<sup>III</sup> Id.

requirements. This would provide further incentive for long distance carriers to “remove traffic from the PSTN to the IP platform simply to obtain a competitive advantage.””

For the foregoing reasons, NEFCOM supports these commenters and urges the Commission to find that AT&T’s VoIP service and other VoIP services are telecommunications services subject to LEC access charges and USF funding mechanisms.

### **III. Overview of SSI’s Comments**

The problems highlighted by these comments are not speculative or hypothetical. Indeed, NEFCOM is being adversely impacted by an entity, SSI, that is providing long distance service using phone-to-phone IP telephony service. In its Comments, SSI confirms that it is operating in the NEFCOM service area, but contends that “phone-to-phone IP telephony services are exempt from access charges.”<sup>12</sup> SSI goes on to allege that although it is an “enhanced and information service provider.” it is also certificated by the Florida Public Service Commission” as an Alternative Local Exchange Company (‘ALEC’)” and as “an Interexchange Company (‘IXC’).”<sup>13</sup> SSI claims, however, that it is not “providing circuit-switched long distance services.”<sup>14</sup> SSI also points out that it is “involved in a billing dispute with a rural ILEC in Florida, Northeast Florida Telephone Company (‘NEFCOM’).”<sup>15</sup> According to SSI, the amount of NEFCOM’s billing for access charges total “almost *three-quarters of a million dollars*.”<sup>16</sup> SSI contends that, “[i]f NEFCOM is not precluded from this imposition of access charges, SSI will effectively be put out of business.”<sup>17</sup>

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<sup>11</sup> Id. at 7. See also, **USTA** Comments at 9-10

<sup>12</sup> SSI Comments at 3.

<sup>13</sup> Id. at 1.

<sup>14</sup> Id.

<sup>15</sup> Id. at 2.

<sup>16</sup> Id. Because SSI has sought to avoid access charge payments, SSI has not ordered network access from NEFCOM’s access tariff. Consequently, NEFCOM’s access charge billings to SSI are based on originating access minutes which are partially actual and partially estimated. Until SSI provides NEFCOM with its percent interstate usage (“PIU”) factor, the access minutes have been rated using NEFCOM’s originating intrastate network access charges.

<sup>17</sup> Id.



SSI states that “another ISP providing phone-to-phone IP telephony in the State of Florida” sought a declaratory statement from the Florida Public Service Commission (“FPSC”), but the FPSC denied the petition. In SSI’s view, this failure of the FPSC to grant the petition and its refusal to open a generic proceeding has created an environment of uncertainty that phone-to-phone IP telephony is a “telecommunications service” and places providers of such service at risk of having to pay access charges. Accordingly, SSI urges this Commission, in the face of the FPSC’s failure to act, to act quickly and favorably on AT&T’s Petition so as to exempt SSI and other phone-to-phone IP telephony providers from the payment of any access charges, “unless the FCC adopts regulations that provide otherwise on a prospective basis.”<sup>18</sup>

In support of its request to grant AT&T’s Petition – and thereby to let SSI off the hook for the payment of access charges, SSI argues that: 1) The “imposition of access charges by ILECs such as NEFCOM on phone-to-phone IP telephony services provided by ISPs such as SSI is contrary to the stated goals of the Telecommunications Act of 1996;” 2) “The FCC has provided an exemption from access charges for ISPs for the very purpose of protecting the development of nascent technologies and new and innovative services;” and 3) “The services provided by SSI are new and innovative and are provided over the public Internet.”

As already demonstrated in the Comments filed by the Rural Telephone Group and other parties, and as will be further demonstrated in these Reply Comments, SSI’s plea for relief in the context of AT&T’s Petition for Declaratory Ruling is neither factually nor legally correct, and contrary to SSI’s assertions, will result in irreparable damage to well-recognized Universal Service goals. In other words, SSI’s pleas for a “free ride” access charge-wise is *unsupportable*.<sup>20</sup>

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<sup>18</sup> *Id.* at 3

<sup>19</sup> *Id.* at 4.

<sup>20</sup> Additionally, because SSI is gaming the system, it is not only getting a free ride access charge-wise at NEFCOM’s expense, it is also getting a cost advantage not available to other

On the other hand, SSI's plea that this Commission act quickly on AT&T's Petition is a valid request. It is critical that the ILECs, particularly the small rural ILECs, such as NEFCOM, have regulatory certainty on the applicability of access charges to phone-to-phone IP telephony as provided by entities such as SSI.<sup>21</sup> As SSI states in its Comments, "SSI will not be able to pay the aggregated access charges NEFCOM alleges it is owed."<sup>22</sup> If this is a true statement, then NEFCOM's continued provision of access services to SSJ assures that NEFCOM will be financially harmed well beyond the almost "*three quarters of a million dollars*" already owed by SSI. These are access charge revenues which NEFCOM could have received from traditional interexchange carriers from whom SSI has siphoned away toll calls originating and terminating in NEFCOM's service area

#### **IV. SSI's Provision of Phone-to-Phone IP Telephony is a "Telecommunications Service"**

As pointed out in the Rural Telephone Group's Opposition, SSI's provision of long distance toll service using Internet protocol ("IP") is anything but an "enhanced service." Interestingly, in its Comments SSI does not provide any description of the long distance toll services it does provide except to state that it "is not providing circuit-switched long distance services."<sup>23</sup> That claim is hardly dispositive of the issue. In fact, a closer examination of how SSI offers and provides its "long distance service" **will** show that SSI is offering a "telecommunications" service and not an "enhanced" or "information" service.

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IXCs who pay access charges. There is nothing in the Telecommunications Act of 1996 or in previous Commission decisions that either contemplates or countenances such results.

<sup>21</sup> Although the Florida Public Service Commission issued a Notice on January 3, 2003, that it will conduct an undocketed Staff workshop on January 27, 2003 "to discuss the issue of phone-to-phone Internet protocol telephony," the Florida Public Service Commission has expressed a reluctance to reach any conclusion on this issue until the FCC has addressed AT&T's Petition for Declaratory Ruling. See FPSC Order No. PSC-02-1858-FOF-TP, issued December 31, 2002, page 3, a copy of which is Attachment D.

<sup>22</sup> SSI Comments at 2.

<sup>23</sup> Id. at 1.

SSI is marketing its long distance service to all residential and business consumers in the area served by NEFCOM, as well as adjacent areas served by other incumbent local exchange companies. A look at SSI's website – SSI markets its long distance service as SETEL – shows that SSI is providing plain old voice long distance telephone service. In fact, SSI's Web home page clearly delineates between its *Phone Services* and *Internet Services* offerings. Under *Phone Services*, SSI lists *Flat Rate Long Distance*, *Long Distance (TTI)*, and *Local*. See Attachment A to these Reply Comments. The SSI Web page for *Flat Rate Long Distance* suggests that SSI's offering is a substitute for 10-10 programs. See Attachment B to these Reply Comments.

The SSI *Frequently Asked Questions* Web page further explains how SSI's *Long Distance Service* works as a substitute for 10-10 service. For example, *Q. Is this one of those 1010XXX calling plans? A. No, you will be dialing a local SETEL access number that puts you on SETEL's service. Q. How does the SETEL system work? A. 1. You will dial 7-digit local access number. 2. Once the number is dialed you will hear a voice prompt to enter the phone number you wish to reach. At that point you simply dial the area code only and 7-digit number. \*\*\*\* Q. Can I program the access number into my telephone? A. Yes, and this is recommended to make your calling easier. Please refer to your telephone manufacturer's instruction book on how to program a number in memory. Q. Where can I call? A. You may call all 50 states in the U.S. and Canada anytime. (This does include Alaska and Hawaii).* See Attachment C to these Reply Comments.

SSI's customers make use of NEFCOM's local network to initiate long distance calls reaching SSI's long distance service in the same manner as any other traditional IXC. What SSI is receiving from NEFCOM is no different from originating Feature Group A ("FGA") access, **As** noted previously, even AT&T acknowledges in its Petition that originating access charges are

applicable to its phone-to-phone IP telephony service.<sup>24</sup> SSI, however, conveniently ignores this aspect of AT&T's Petition. There is no factual or regulatory basis for SSI not also paying access charges on originating access at the very least while the Commission considers AT&T's Petition.

A review of the Commission Report to Congress, as well as the decision of the New York Public Service Commission ("NYPSC") in the *DataNet* case, amply supports a conclusion that the manner in which SSI is offering phone-to-phone IP telephony long distance service amounts to the provision of "telecommunications services" to which access charges should apply.

In its Report to Congress, this Commission addressed why IP telephony as provided by SSI should be considered a "telecommunications service." The Commission defined the term "telecommunications service" as follows:

A telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable, satellite, or some other infrastructure. Its classification depends rather on the nature of the service being offered to customers. Stated another way, if the user can receive nothing more than pure transmission, the service is a telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service. A functional analysis would be required even were we to adopt an overlapping definition of 'telecommunications service' and 'information service.'<sup>25</sup>

The Commission then enumerated several criteria for testing whether phone-to-phone IP telephony is a "telecommunications service:"

In using the term 'phone-to-phone' IP telephony, we tentatively intend to refer to services in which the provider meets the following conditions: (1) it holds itself out as providing voice telephony or facsimile transmission service; (2) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (3) it allows the customer

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<sup>24</sup> AT&T Petition at 19.

<sup>25</sup> *Federal-State Joint Board on Universal Service, Report to Congress*, 13 FCC Rcd. 11501, at ¶ 83 (1998) (Report to Congress).

to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and **(4)** it transmits customer information without net change in form or content.<sup>26</sup>

The Commission then concluded:

Specifically, when an IP telephony service provider deploys a gateway within the network to enable phone-to-phone service, it creates a virtual transmission path between points on the public switched telephone network over a packet switched IP network. These providers typically purchase dial-up or dedicated circuits from carriers and use those circuits to originate or terminate Internet-based calls. From a functional standpoint, users of these services obtain only voice transmission, rather than information services as access to stored files. The provider does not offer a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information. Thus, the record currently before us suggests that this type of IP telephony lacks the characteristics that would render them “information services” within the meaning of the statute, and instead bear the characteristics of “telecommunications services.”<sup>27</sup>

Likewise, in the *DataNet* case, the NYPSC determined that the provision of IP telephony by DataNet – which is identical to the facts in AT&T’s Petition, was, in fact, the provision of “telecommunications services,” and access charges do apply. The NYPSC based its decision upon the following criteria which mirror those criteria established by this Commission:

- (1) the long distance carrier holds itself out as providing voice telephony service;
- (2) the carrier does not provide enhanced functionality such as storing, processing or retrieving information;
- (3) customers are not required to use anything other than ordinary CPE;
- (4)** customers dial calls using the North American Numbering Plan;
- (5) the carrier’s use of Internet Protocol is only within its own private network and does not result in any net protocol conversion to the end user;
- (6)** a substantial portion of the carrier’s traffic uses no IP conversion at all; and

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<sup>26</sup> *Id.* at ¶ 85.

<sup>27</sup> *Id.* at ¶ 89.

- (7) the carrier uses the same circuit-switched access from local exchange carriers as obtained by other IXC's and imposes the same burdens on the local exchange as other IXC's.<sup>28</sup>

Based upon SSI's Website description of its long distance service, SSI meets the Commission and the *DataNet* case criteria and is obviously providing "telecommunications services" to which access charges apply. For example, SSI holds itself out as providing voice telephony service; SSI does not claim it is providing any enhanced functionality; SSI's customers use an ordinary touchtone telephone to make calls; SSI's customers dial calls using the North American Numbering Plan; SSI's use of Internet Protocol is only within its own network; SSI uses the same circuit-switched access from NEFCOM as obtained by other IXC's; and SSI imposes the same burdens on NEFCOM as other IXC's.

**V. Any Exemption of Long Distance Service Providers Using IP Telephony From the Payment of Access Charges Will Impact Universal Service Goals**

In its Opposition, the Rural Telephone Group outlined the potential devastation confronting its members and other small, rural local exchange companies if long distance providers such as AT&T and SSI are exempted from the traditional access charge regime. The SSI Comments underscore the Universal Service concerns expressed by the Rural Telephone Group. As noted in the Comments filed by SSI, it already owes NEFCOM *almost three-quarters of a million dollars* to date. Just imagine the carnage if AT&T's Petition was granted and the phone-to-phone IP telephony being used by AT&T and SSI was declared to be *an enhanced* service not subject to access charges. Currently, 13.2 percent of NEFCOM's total revenues come from interstate and intrastate access charges. With less than 10,000 business and residential access lines in service, the financial impact of losing 13.2 percent of its revenue stream would be catastrophic. Even assuming that SSI would be the only IXC in NEFCOM's

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<sup>28</sup> *Complaint of Frontier Telephone Company of Rochester Against DataNet Corporation Concerning Alleged Refusal to Pay Intrastate Carrier Access Charges*, Case 01-C-1119, p. 9 (May 31, 2002).

service area to escape the access charge regime, NEFCOM's monthly residential basic local service rates would have to be increased by \$4.23 per month just to make up the current access revenue loss.

This is not a case of few isolated incursions into the market to test a new technology with linear expectations. If SSI, a small IXC posing as an ISP in rural Florida, can acquire and employ the necessary IP technology, then there is no barrier to any other IXC no matter how small or wherever located to provide phone-to-phone IP telephony. As noted in SSI's Comments, the Florida Public Service Commission has already been confronted with a Petition for Declaratory Statement by an entity, CNM Networks, Inc., seeking a declaration that phone-to-phone Internet Protocol (IP) telephony is not a telecommunications service. Similar requests have been made and are being made in other states, including New York and Colorado. Should any such petitions, including the instant AT&T Petition, be granted, the floodgates will be opened, other IXCs of all sizes will simply employ phone-to-phone IP telephony, and access charges as a mechanism for Universal Service support will simply disappear. In that event, incumbent local exchange companies will face financial ruin or will have to seek regulatory relief to increase local rates. which in NEFCOM's case could result in a **\$17.32** per month increase in monthly residential basic service rates.

In the meantime. entities such as SSI are already providing long distance services using phone-to-phone IP telephony and are refusing to pay access charges on the erroneous presumption that this Commission has granted an exemption. The incumbent local exchange company, NEFCOM in this situation, **is** confronted with a catch-22 dilemma. NEFCOM cannot today go to state court to ~~seek~~ collection without the possibility of a referral of *the* matter in the first instance to the Florida Public Service Commission for its determination as to whether access charges apply. Of course, as previously noted, the Florida Public Service Commission has

exhibited an unwillingness to act until this Commission issues its decision on the pending AT&T Petition. Likewise, any attempt to secure collection in the federal court may well wind up at this Commission for its initial determination, which determination will be complicated by the pending AT&T Petition. Thus, without quick action on AT&T's Petition, local exchange companies, such as NEFCOM, will continue to face significant access charge revenue erosion and substantial uncertainty as to the availability of judicial recourse for recovery of the sums owed to them. It is therefore imperative that this Commission act expeditiously in ruling against AT&T on its Petition for Declaratory Ruling.

## **VI. Conclusion**

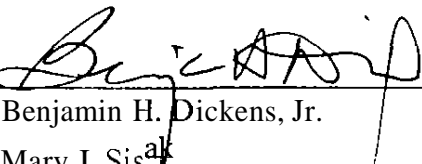
AT&T's phone-to-phone IP service and other such services are telecommunications services that should be subject to access charges and universal service mechanisms. A number of commenters have demonstrated that these services are functionally equivalent to telecommunications services provided by interexchange carriers and that the facilities of the LECs are used to originate and terminate these calls. Therefore, the LECs are entitled to be compensated for the use of their facilities through the access charge mechanism. To do otherwise would reduce the LECs access charge revenues, to which they are entitled, and create a regulatory incentive for carriers to continue to shift traffic to IP platforms to avoid access charges and universal service obligations.



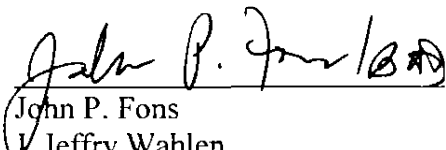
Moreover, these adverse consequences are not speculative. Rather, carriers like AT&T and SSI are currently refusing to pay access charges, even though their services use the facilities of the LECs. Accordingly, NEFCOM asks the Commission to take quick action on AT&T's Petition, and find that phone-to-phone IP telephony services are "telecommunications services" subject to all applicable access charges and universal service obligations.

Respectfully submitted,

**NORTHEAST FLORIDA TELEPHONE  
COMPANY**

By   
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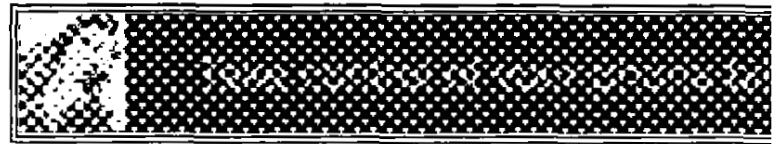
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Dated: January 24, 2003

## **ATTACHMENT A**



• [Pay Your Bill Online](#)

## SERVICES

### Phone Services

- Flat Rate Long Distance
- Local Exchange (LTL)

### Internet Services

- DSL Service
- Cable Modem

### TV Service

- Premium Channels
- Pay Per View

[Check Your Web Mail](#)

[Search The Web](#)

[Shop Online](#)

[Be an Agent](#)

## NEWS

- BCST
- ABCN
- CNN
- Jacks
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## **TACHMENT B**

[CLOSE THIS WINDOW](#)

## FLAT RATE LONG DISTANCE

SETEL offers UNLIMITED NATIONWIDE LONG DISTANCE for a FLAT RATE MONTHLY FEE. Yes, that's right, for \$39.95 per month you have UNLIMITED NATIONWIDE LONG DISTANCE. This includes all 50 states (even Alaska and Hawaii) and Canada.

### UNLIMITED FLAT RATE LONG DISTANCE FOR \$39.95

Pay for Long Distance by the MONTH NOT BY THE MINUTE!

- Flat Rate Monthly Charge
- No long distance activation fees
- All Call Forward or Credit Cards
- Unlimited "Long Distance" Calls
- Call Anywhere in the 50 states and Canada
- 24 hours a day, 7 days a week
- Cost of \$39.95 per month (even months)
- Cancel anytime

Are you tired of all the confusing 10-10 programs? What about the night and weekend programs? Don't know who you can call, or time of day you can call and get the best rate?

With FLAT RATE, you can call anyone, any time, day or night, and talk as long as you like. When we say UNLIMITED LONG DISTANCE, we mean UNLIMITED LONG DISTANCE!

TO TAKE ADVANTAGE OF FLAT RATE, CALL 604-268-1300 OR 1-877-439-9423

## **ATTACHMENT C**

[CLOSE THIS WINDOW](#)

## FREQUENTLY ASKED QUESTIONS

What do I call to activate service?

(800) 259-1300 or (437) 439-9423

Is this also the customer service number?

Yes

Is this one of those 1010xxx calling plans?

No. You will be dialing a local SETEL access number that puts you on SETEL's service.

Can I use the SETEL system at home?

Yes. You dial 7 digits for a service number.

If your 7 digit number is dialed you will hear a voice prompt to enter the phone number you wish to reach. At that point, you simply dial the area code only and 7-digit number.

Do I have a limit on my long distance calls?

No. Absolutely not. You are paying for long distance by the month not by the minute.

Are there rates for businesses?

The \$39.95 per month rate is for residential use ONLY. SETEL is very strict about the difference between business and residential. Business rates are tailored to each business individual needs. SETEL guarantees savings. The flat rate a business has will apply to all lines and will provide UNLIMITED FLAT RATE long distance.

Can I program the access number into my telephone?

Yes, and this is recommended to make your calling easier. Please refer to your telephone or computer's manual or book on how to program a number in memory.

Where can I call?

You may call all 50 states in the U.S. and Canada anytime. (This does include Alaska and Hawaii)

Are there times to any special times for calling?

No. You may call seven days a week at any time you like.

Can I use caller ID blocking?

No. Our system will not be able to recognize your registered telephone number therefore, access will be denied.

Do I need to remove Caller ID blocking before making a call?

## ACHMENT D



JPF

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of CNM Networks,  
Inc. for declaratory statement  
that CNM's phone-to-phone  
Internet protocol (IP) telephony  
is not "telecommunications" and  
that CNM is not a  
"telecommunications company"  
subject to Florida Public  
Service Commission jurisdiction.

DOCKET NO. 021061-TP  
ORDER NO. PSC-02-1858-FOF-TP  
ISSUED: December 31, 2002

The following Commissioners participated in the disposition of  
this matter:

LETA A. JABER, Chairman  
J. JEFFRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

BACKGROUND

Pursuant to section 120.565, Florida Statutes, and Rule 28-  
103.001, Florida Administrative Code, CNM Networks, Inc. (CNM)  
filed a petition for declaratory statement on October 18, 2002.  
CNM requests that we issue a declaratory statement that phone-to-  
phone Internet protocol (IP) telephony is not telecommunications  
under Florida law and therefore, that CNM is not a  
telecommunications company subject to our certification and  
tariffing requirements. In the alternative, CNM states that if we  
believe that we can or should regulate phone-to-phone IP telephony  
or the companies that provide such service, then CNM requests that  
we first conduct a generic investigation or rulemaking proceeding  
to address the issues raised in its petition.

BellSouth Telecommunications, Inc. (BellSouth), Northeast  
Florida Telephone Company (NEFTC), Sprint-Florida, Inc. (Sprint),  
ALLTEL Florida Inc. (ALLTEL), Verizon Florida Inc. (Verizon),

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Frontier Communications of the South, Inc. (Frontier), TDS Telecom/Quincy Telephone (TDS), Florida Cable Telecommunications Association (FCTA), ITS Telecommunications Systems, Inc. (ITS), Smart City Telecommunications LLC d/b/a Smart City Telecom (Smart City), and AT&T Communications of the Southern States, LLC and TCG South Florida, Inc. (AT&T) filed petitions/motions for intervention in this docket. On November 19, 2002, CNM filed a Motion to Dismiss the Petitions for Intervention, or in the Alternative, to Conduct a Generic Proceeding or Rulemaking or to Stay Pending FCC Action. On December 2, 2002, Sprint, NEFTC, ALLTEL, Smart City, Frontier, ITS, TDS, FCTA, Verizon, and BellSouth timely filed responses to CNM's Motion to Dismiss.

We have jurisdiction pursuant to section 120.565, Florida Statutes.

CNM'S PETITION FOR DECLARATORY STATEMENT

CNM states that the Florida statutes at issue are sections 364.01(4)(b) and (c) and 364.02(2), (11), and (12). The company asserts that the Commission orders at issue are In re: Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 Telecommunications Act of 1996, Order No. PSC-02-1248-POF-TP, issued September 10, 2002, in Docket No. 000075-TP (Phases II and IIA); In re: Investigation into BellSouth Telecommunications, Inc.'s Tariff Filing (02-0057) on Installment Billing, Order No. PSC-02-0255-PAA-TL, issued February 27, 2002, in Docket No. 020086-TL; In re: Petition of BellSouth Telecommunications, Inc. for Section 252(b) Arbitration of Interconnection Agreement with Intermedia Communications, Inc., Order No. PSC-01-1015-POF-TP, issued April 24, 2001, in Docket No. 991854-TP; In re: Petition of MCI Metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Order No. PSC-01-0824-POF-TP, issued March 30, 2001, in Docket No. 000649-TP; and In re: Petition of MCI Metro Access Transmission Services LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc., Concerning Interconnection and Resale

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Under the Telecommunications Act of 1996, Order No. PSC-00-1803-  
PHO-TP, issued October 2, 2000, in Docket No. 000649-TP.

CNM states that the Federal statutes at issue are Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "Act"); 47 U.S.C. sections 151, 153(20), (43), (44), and (46), 230(b), and 251. It asserts that the Federal Communications Commission (FCC) orders at issue are: In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272, 11 FCC Rcd 21905 and In the Matter of Federal-State Joint Board and Universal Service (Report to Congress), 18 FCC Rcd 11501.

Section 120.565, Florida Statutes, governs the issuance of a declaratory statement by an agency. In pertinent part, it provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

There is case law, however, which states that when the result is an agency statement of general applicability interpreting law or policy, declaratory statement proceedings are inappropriate. See, e.g., Regal-Kilchens, Inc. v. Florida Department of Revenue, 641 So. 2d 158 (Fla. 1st DCA 1994). We find that any statement by this Commission on phone-to-phone IP telephony would be a statement of general applicability interpreting law and policy which would carry implications for the telecommunications industry statewide. This finding is supported by the large number of telecommunications companies which have requested permission to intervene in this docket.

We find that it would not be proper to address the issue raised in CNM's Petition by way of a declaratory statement. Thus, CNM's Petition for Declaratory Statement is hereby denied. We also find that as the FCC is currently addressing a similar matter, it would be administratively inefficient at this time to grant the alternative relief requested in CNM's petition. We, however, direct our staff to conduct a undocketed workshop to explore the issue of phone-to-phone IP telephony.

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CNM'S MOTION TO DISMISS THE MOTIONS/PETITIONS  
 FOR INTERVENTION

As mentioned above, CNM filed a motion to dismiss the petitions for intervention filed in this docket. By our own motion at our December 17, 2002, agenda conference, we allowed those who filed petitions for intervention to participate in the discussion of CNM's Petition. As we have denied CNM's Petition, the petitions/motions for intervention filed in this docket are moot. Consequently, CNM's Motion to Dismiss is also rendered moot.

No further action is required, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that CNM Networks, Inc.'s Petition for Declaratory Statement is hereby denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 31st day of December, 2002.

BLANCA S. BAYO, Director  
 Division of the Commission Clerk  
 and Administrative Services

By: /s/ Kay Flynn  
 Kay Flynn, Chief  
 Bureau of Records and Hearing  
 Services

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

( S E A L )

SMC

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

## CERTIFICATE OF SERVICE

I, Douglas W. Everett, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing Comments were served by hand delivery\* or by U.S. Mail on this 24<sup>th</sup> day of January, 2003 to the persons listed below:

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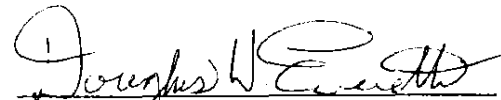
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